

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Criminal Action No.

v.

5:14-CR-340 (GTS)

NICOLE F. VAISEY

OFFER OF PROOF

Defendant.

The defendant is scheduled to appear on May 14, 2015 and enter a plea of guilty to all counts charged in Superseding Indictment 5:14-CR-340 (hereinafter the Indictment).

The parties have not entered into a formal plea agreement. The United States submits this Offer of Proof to provide the Court with a summary of the Government's evidence as to each of the charged offenses, and the factual basis for an entry of a guilty plea.

**CLASSIFICATION OF THE OFFENSE AND
MAXIMUM POSSIBLE PENALTIES**

Imprisonment

A violation of 18 U.S.C. § 2251(a), and § 2251(e), as alleged in Counts 1 through 10 of the Indictment, is a Class B felony. Each count carries a statutory mandatory minimum penalty of 15 years imprisonment, and a maximum term of 30 years imprisonment.

Fine

Each count of conviction carries a maximum fine of \$250,000. 18 U.S.C. § 3571.

Supervised Release

In addition to imposing any other penalty, the sentencing court must require the defendant to serve a term of supervised release between 5 years and life, to begin after

imprisonment. *See* 18 U.S.C. § 3583(k). A violation of the conditions of supervised release during that time period may result in the defendant being sentenced to an additional term of imprisonment of up to 3 years, except as provided below.

Required Registration for Sex Offenders

Under the Sex Offender Registration and Notification Act, the defendant, as a result of the conviction in this case, must register as a sex offender, and keep the registration current, in each jurisdiction where the defendant resides, where the defendant is an employee, and where the defendant is a student. For initial registration purposes, the defendant also must register in New York as a result of this conviction, even if the defendant resides in a different jurisdiction. A sex offender who knowingly fails to register or update a required registration may be subject to prosecution under 18 U.S.C. § 2250, and face a penalty of up to ten years imprisonment. Further, notwithstanding the description set out above of the consequences of a violation of the conditions of supervised release, if the defendant, while on supervised release, commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591, of Title 18 for which imprisonment for a term longer than 1 year can be imposed, the court must revoke the term of supervised release and require the defendant to serve a term of imprisonment of not less than 5 years on the violation.

Restitution

Pursuant to 18 U.S.C. § 2259(a), the Court is required to order restitution for the full amount of the victims' compensable losses as defined at 18 U.S.C. § 2259(b)(3) and(c).

The Court may not decline to award restitution because of the defendant's economic circumstances or the fact that the victims have, or are entitled to receive compensation for their injuries from the proceeds of insurance or any other source.

Forfeiture

Pursuant to 18 U.S.C. § 2253 and 21 U.S.C. § 853(p), the defendant will consent to entry of an order directing forfeiture to the United States pursuant to the Forfeiture Allegation in the Indictment, as supplemented by the Bill of Particulars. This property includes:

1. One 2004 red Pontiac Sunfire bearing VIN # 14-FBI-006923, and New York registration GCR6443;
2. One 2001 white Honda Civic bearing VIN # 2HGES16571H535401, and New York registration BVZ9284;
3. One Antec homemade desktop computer with no serial number, containing the following five hard drives:
 - a. One 500GB Seagate hard drive, S/N 5QM11ZRR;
 - b. One 1.0 TB Western Digital hard drive, S/N WMATV8440832;
 - c. One 500GB Western Digital hard drive, S/N WCAPW2257346;
 - d. One 300GB Seagate hard drive, S/N 5NF133W0;
 - e. One 3000GB Seagate hard drive, S/N W1F23A2C;
4. One Canon G7 Digital camera S/N #3221205452 with charger;
5. One iPhone model #A1349, EMC#2422, FCC ID: BCG-E2422B;
6. One iPhone model #A1387, IC# 579C-E2430A, FCC ID: BCG-E2430A;
7. One Logitech HD 1080 Webcam, S/N 1212LZ0AEPM8;
8. One Rabbit TV Flash Drive;
9. One Scan Disk 1GB Memory Card;
10. One Samsung WB100 Digital Camera, S/N A48CC9AD100FSMJ;
11. One Sony PS3 Playstation with controller and cords, S/N CF765432818;

12. One Barnes & Noble Nook Tablet;
13. One Microsoft XBox 360 Console with 2 controllers, cords and Kinect Sensor, S/N 532803714705;
14. One Toshiba Satellite L655 Laptop;
15. One HP Pavilion Laptop, S/N TW12920577;
16. One PNY Optima 8GB Memory Card;
17. One 100MB Zip Drive;
18. One Garmin Nuvi GPS;
19. One Kodak Easyshare Digital Camera, S/N KCGRD12366121;
20. Assorted VHS Tapes;
21. Assorted CD and DVD's; and
22. Assorted 3 ½" Floppy Disks.

Special Assessment

The defendant will be required to pay a special assessment of \$100 per count, for a total of \$1,000, due and payable at or before sentencing. 18 U.S.C. § 3013.

ELEMENTS OF THE OFFENSES

The following are the elements of the offense of Conspiracy to Sexually Exploit Children, as charged in **Count 1** of the Indictment:

First: Two or more persons conspired to employ, use, persuade, induce, entice, or coerce a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct;

Second: The defendant joined the conspiracy, either at its inception or sometime during its existence, knowing the purpose of the conspiracy and intending to help it succeed;

Third: The visual depictions that were the object of the conspiracy were produced or intended to be produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means.

The following are the elements of the offense Sexual Exploitation of Children, as charged in Counts **2 through 10** of the Indictment:

First: The defendant employed, used, persuaded, induced, enticed, or coerced a minor to engage in sexually explicit conduct;

Second: The defendant's actions were for the purpose of producing visual depictions of such conduct; and

Third: Such visual depictions were produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means.

FACTUAL BASIS FOR PLEA

As to Count 1:

As to Count 1, the Indictment alleges that the defendant did conspire with STEPHEN M. HOWELLS, II to employ, use, persuade, induce, entice, and coerce minors, including: V-1, V-2, V-3 and V-6, female children born between 2002 and 2007, to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct, where the visual depictions were produced using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, in violation of Title 18, United States Code, Sections 2251(a) and 2251(e).

The Government would prove the following:

Beginning in or about 2013, in St. Lawrence County, New York, defendant NICOLE F. VAISEY and STEPHEN M. HOWELLS, II conspired with one another to engage minors in sexually explicit conduct for the purpose of producing visual depictions of that conduct.

In furtherance of the conspiracy, HOWELLS used his position as a registered nurse to obtain medications, including controlled substances, for use in sedating the minor victims, thereby aiding in the commission of the sexual exploitation offenses.

HOWELLS, in fact, administered substances to each of the victims charged in Count 1 of the Indictment as a part of the conspiracy. FBI Toxicology reports confirm the following:

1. V-1 was drugged with zolpidem (trade name Ambien) and midazolam (trade name Versed);

2. V-2 was drugged with Ambien;

3. V-3 was drugged with oxycodone (trade name Oxycontin), oxymorphone (trade name Opana), morphine, methadone, Ambien, Versed, diazepam (trade name Valium), nordiazepam (trade name Nordaz), temazepam (trade name Restoril) and alprazolam (trade name Xanax), with her exposure to these drugs consistent with a time from of June 2013 – August 2014;

4. V-6 was drugged with Ambien and Oxycontin with her exposure to these drugs consistent with a time from of September 2013 – March 2014.

In furtherance of the conspiracy, NICOLE F. VAISEY arranged for access to V-3, a minor female child born in 2006, and made arrangements throughout the course of the conspiracy for V-3 to spend the night with VAISEY and HOWELLS, during which time the child was used by VAISEY and HOWELLS to engage in sexually explicit conduct for the

purpose of producing visual depictions of that conduct, using materials (more fully described below) that had been mailed, shipped, or transported in and affecting interstate and foreign commerce.

In furtherance of the conspiracy, STEPHEN M. HOWELLS, II arranged for access to V-6, a minor female child born in 2003, and made arrangements, throughout the course of the conspiracy, for V-6 to spend the night with VAISEY and HOWELLS, during which time the child was used by VAISEY and HOWELLS to engage in sexually explicit conduct for the purpose of producing visual depictions of that conduct, using materials (more fully described below) that had been mailed, shipped, or transported in and affecting interstate and foreign commerce.

In furtherance of the conspiracy, and over the course of several months in 2014, STEPHEN M. HOWELLS and NICOLE F. VAISEY together developed and planned a scheme to kidnap minor children for use in sexually explicit conduct and for the purpose of producing visual depictions of that conduct, using materials that had been mailed, shipped, or transported in and affecting interstate and foreign commerce.

In furtherance of the conspiracy and the plan to kidnap minor children, together, and separately, HOWELLS and VAISEY made trips to observe and locate possible children to abduct. In that regard, on or about July 1, 2014 VAISEY sent a text message to HOWELLS indicating that she had seen four “pixies/princesses” (a reference to Amish girls) traveling in a buggy on a deserted road, and that “it would have been perfect.” Additionally, in or about early August, 2014, HOWELLS had observed two Amish girls at a roadside farm stand at their home in St. Lawrence County, after which he and VAISEY discussed a plan to abduct the children from this location.

In furtherance of the conspiracy, on Wednesday, August 13th, 2014, VAISEY and HOWELLS drove to the pre-determined Amish farm stand with the intention of abducting the two girls. To help accomplish the abduction, HOWELLS and VAISEY tied VAISEY's dog to the rear driver's side door inside HOWELLS' vehicle as a means to lure the children inside. VAISEY and HOWELLS drove to the farm stand in HOWELLS' vehicle. VAISEY was the driver.

In furtherance of the conspiracy, on August 13, 2014, HOWELLS and VAISEY kidnapped V-1 and V-2, Amish female children ages 11 and 6, respectively, from their family's roadside farm stand in St. Lawrence County. Pretending to be a customer at the farm stand, HOWELLS lured and then forced V-1 and V-2 into the back seat of the vehicle, where he used a syringe to inject V-1 with Versed in an attempt to get her to keep quiet. VAISEY then drove off with the children in the car, taking them to the St. Lawrence County residence shared by VAISEY and HOWELLS.

As a part of the conspiracy, V-1 and V-2 were sexually assaulted by HOWELLS several times over the course of approximately 25 hours for the purpose of producing visual depictions of that conduct. Using materials (more fully described below) that had been mailed, shipped, or transported in and affecting interstate and foreign commerce, visual depictions of V-1 and V-2, and specifically of HOWELLS engaged in sexually explicit conduct with V-1, were recorded by both VAISEY and HOWELLS at their St. Lawrence County residence.

As a part of the conspiracy, when not being abused, V-1 and V-2 were restrained together at the ankles with handcuffs and chains.

As to Counts 2 - 10

On the dates alleged in Counts 2 – 10, STEPHEN M. HOWELLS, II and NICOLE F. VAISEY did employ, use, persuade, induce, entice, and coerce V-1, V-3, and V-6, minor children born in 2002, 2006, and 2003, respectively, to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct, where the visual depictions were produced using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer. The depictions produced by HOWELLS and VAISEY were all recorded in their St. Lawrence County residence, and were recovered by the FBI from an encrypted drive on HOWELLS’ computer after the password was discovered by the FBI in a text message from HOWELLS to VAISEY, wherein VAISEY requested the password, and HOWELLS provided it to her.

As to each of these substantive counts, the Government would prove the following:

Count 2:

On or about September 7, 2013, VAISEY and HOWELLS, acting together, sexually exploited V-3 and produced depictions of the child engaged in sexually explicit conduct, including the following:

1. A video file bearing part of V-3’s name in the title, followed by “**Video 24.wmv**.”

This is a 9:45 video file depicting STEPHEN HOWELLS removing V-3’s panties, exposing her vagina. HOWELLS is then depicted masturbating, fondling V-3’s vagina with his hand, and having mouth to vagina contact with her. HOWELLS is then depicted handing a small digital camera to NICOLE VAISEY who records HOWELLS engaging in mouth to vagina contact with V-3, as well as additional activity that is not visible from the camera angle.

2. A video entitled “**MVI_7681.avi**” is a 4:06 video file which appears to be the file created with the digital camera used by VAISEY in the “Video 24” file previously described, and depicts the activity that was not visible due to the camera angle in Video 24 – which is HOWELLS penetrating V-3’s vagina with his penis.

Count 3:

On or about October 20, 2013, HOWELLS and VAISEY, acting together, sexually exploited V-3 and produced depictions of the child engaged in sexually explicit conduct, including the following:

1. A video bearing part of V-3’s name in the title, followed by “**Video 30.wmv**. This is a 28:20 video file depicting HOWELLS rubbing his penis on V-3’s vagina and anus and engaging in mouth to vagina contact with her. NICOLE VAISEY is depicted in the bed and seen filming the abuse with a small digital camera.

2. A video file entitled **MVI_7729.avi**: is a 1:18 video file that appears to be the video created by NICOLE VAISEY as depicted in the “Video 30” file described above. It depicts HOWELLS rubbing his penis in and on V-3’s vagina, digitally penetrating her, and engaging in mouth to vagina contact with her.

Count 4:

On or about November 16, 2013, HOWELLS and VAISEY acting together, sexually exploited V-3 and produced depictions of the child engaged in sexually explicit conduct, including the following:

A video file that includes part of V-3’s name in the title along with “**Video 31.wmv**. This is a 1:17:46 video file that depicts STEPHEN HOWELLS removing V-3’s night shirt and panties, leaving her naked. HOWELLS is depicted digitally penetrating V-3’s vagina, and

fondling her buttocks and anus while he has intercourse with NICOLE VAISEY. HOWELLS is then depicted penetrating V-3's vagina with his penis, and VAISEY is depicted using a small digital camera to film HOWELLS rubbing his penis in and on V-3's vagina.

Count 5:

On or about November 17, 2013, HOWELLS and VAISEY, acting together, sexually exploited V-6 and produced depictions of the child engaged in sexually explicit conduct, including the following:

A video file that includes part of V-6's name in the title along "**Video 33.wmv.**" This is a 40:16 video file that depicts STEPHEN HOWELLS getting into bed and fondling V-6's breasts, using V-6's hand to stimulate his penis, removing V-6's pants and panties to expose her vagina, and digitally penetrating V-6. HOWELLS is depicted taking additional photos and videos of V-6 with a hand-held digital camera, and VAISEY is depicted using the same camera to record HOWELLS engaging in mouth to vagina contact with V-6. VAISEY is also depicted licking V-6's breasts.

Count 6:

On or about December 15, 2013, HOWELLS and VAISEY, acting together, sexually exploited V-6 and produced depictions of the child engaged in sexually explicit conduct, including the following:

1. A video file that includes V-6's name in the title, along with "**Video 2.wmv.**" This is an 18:13 video file depicting V-6, STEPHEN HOWELLS, and NICOLE VAISEY in the bed at HOWELLS and VAISEY's residence. VAISEY is depicted fondling V-6's breasts. HOWELLS is depicted fondling V-6's breasts, and using V-6's hand to stimulate his penis.

HOWELLS is also depicted pouring a clear liquid from a large syringe into V-6's mouth while she sleeps.

2. A video file that includes V-6's name in the title, along with "**Video 3.wmv.**" This is a 1:08:33 video file which appears to be a continuation of the activity in the previously described "Video 2." In this file, HOWELLS is depicted pouring a clear liquid from a test tube into V-6's mouth, and is later seen pouring a liquid from a large syringe into the test tube and then into V-6's mouth again. VAISEY is depicted with her hand inside V-6's pants, appearing to be fondling V-6's vagina. HOWELLS is depicted masturbating while fondling V-6's breasts, using V-6's hand to stimulate his penis, and rubbing his penis on V-6's buttocks. HOWELLS is also seen shining a flashlight into V-6's eyes. VAISEY is depicted using a small digital camera to record the activity between HOWELLS and V-6.

3. A video file that includes V-6's name in the title, along with "**cum MVI_7837.AVI.**" This is a 2:41 video file depicting HOWELLS masturbating to ejaculation on V-6's stomach. VAISEY is depicted handing the camera that she was using to record this conduct to HOWELLS who then records VAISEY licking HOWELLS' semen from V-6's stomach and breasts.

Count 7:

On or about December 29, 2013, HOWELLS and VAISEY, acting together, sexually exploited V-3 and produced depictions of the child engaged in sexually explicit conduct, including the following:

A file entitled "**Video 8.mp4.**" This is a 31:03 video file depicting V-3, VAISEY and HOWELLS in the bed at their residence. VAISEY is depicted performing oral sex on V-3 and using a vibrator on V-3's vagina while HOWELLS uses a small handheld digital camera to

record the abuse. Both VAISEY and HOWELLS are depicted digitally penetrating V-3's vagina. VAISEY is also depicted engaging in mouth to vagina contact with V-3 while HOWELLS puts his penis in V-3's mouth. VAISEY is then depicted using a handheld digital camera to record HOWELLS masturbating over V-3's vagina. HOWELLS is then depicted putting his penis inside V-3's vagina, and ejaculating, after which VAISEY is depicted engaging in mouth to vagina contact with V-3.

Count 8:

On or about April 18, 2014, HOWELLS and VAISEY, acting together, sexually exploited V-3 and produced depictions of the child engaged in sexually explicit conduct, including the following:

A video file bearing a part of V-3's name in the title, followed by "**Video 14.wmv.**" This is a 19:10 video file depicting HOWELLS fondling V-3's breasts. HOWELLS is depicted removing the camera from its original location, and handing it to VAISEY, who films HOWELLS rubbing his penis in and on V-3's buttocks, and inserting his finger, and then his penis, into V-3's vagina.

Count 9:

On or about May 31, 2014, HOWELLS and VAISEY, acting together, sexually exploited V-3 and produced depictions of the child engaged in sexually explicit conduct, including the following:

A file entitled "**Video 16.wmv.**" This is a 1:00:32 video file, depicting NICOLE VAISEY assisting V-3 to take her shorts and panties off. VAISEY is heard saying "get up" and is depicted putting V-3 on top of STEPHEN HOWELLS, who is lying on his back, so that V-3's head is facing HOWELLS' feet. HOWELLS is depicted engaging in mouth to vagina contact

with V-3. VAISEY is then depicted engaging in mouth to penis contact with HOWELLS while at the same time digitally penetrating V-3's vagina. V-3 is then depicted sitting on the bed and manually stimulating HOWELLS' penis while VAISEY is heard saying "kiss it" repeatedly. HOWELLS then penetrates V-3's vagina with his penis while VAISEY is depicted filming the abuse with a small hand-held digital camera. HOWELLS then ejaculates inside V-3's vagina, after which Vaisey engages in mouth to vagina contact with V-3.

Count 10:

On or about August 13, 2014, HOWELLS and VAISEY, acting together, sexually exploited V-1 and produced depictions of the child engaged in sexually explicit conduct, including the following:

A video file entitled "**Video2.mov**" which depicts V-1 and V-2 in the bed at HOWELLS' and VAISEY'S residence. V-2 is asleep during the entirety of the video. VAISEY is depicted in the bed with the children. HOWELLS depicted fondling V-1's breasts and vagina, engaging mouth to vagina contact with her, and digitally penetrating her vagina. HOWELLS is then depicted unhooking handcuffs that were used to secure V-1 and V-2 together by the ankles. He is then depicted re-hooking the handcuffs to V-1's wrists, and securing her to a chain that is attached to the head of the bed. HOWELLS then appears to penetrate V-1 both vaginally and anally. VAISEY is depicted watching the abuse, and then she is seen taking a digital camera from near her in the bed, and is depicted filming the abuse of V-1.

All of the visual depictions involved in Counts 1 – 10 were produced using materials that had traveled in interstate and foreign commerce and were not manufactured in the state of New York, including a Logitech HD 1080P webcam, a Canon Powershot G7 digital Camera S/N 3221205452, manufactured in Japan, and a Samsung WB100 Digital Camera S/N

A48CC9AD100FSMJ, manufactured in China. Additionally, all depictions involved in Counts 1 – 10 were saved to a Seagate Barracuda 3000GB hard drive S/N W1F23A2C, which was manufactured in China.

Dated: May 14, 2014

Respectfully submitted,

RICHARD S. HARTUNIAN

United States Attorney

/s/ Lisa M. Fletcher

By: Lisa M. Fletcher
Assistant U. S. Attorney
Bar Roll No. 510187

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2015 I electronically filed the foregoing document with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to counsel of record for the defendant.

Bradford Riendeau, Esq.

/s/

Paula Briggs
Lead Legal Assistant